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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

May 17, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Review of the Commission's Regulations Governing Television Broadcasting (MM Docket Nos. 91-221 and 87-8)

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Submitted herewith for filing, on behalf of our client, Malrite Communications Group, are an original and nine copies of its Comments in the above-referenced rulemaking proceeding, involving review of the Commission's regulations governing television broadcasting.

Please direct any inquiries concerning this submission to the undersigned.

Respectfully submitted,

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER

By: ______________________
Irving Gastfreund

Enclosures

DOC. 12120890

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Review of the Commission's Regulations Governing Television Broadcasting	)))	MM Docket No. 91-221
	)	
Television Satellite Stations Review of Policy and Rules	))	MM Docket No. 87-8

TO: **The Commission**

COMMENTS OF MALRITE COMMUNICATIONS GROUP, INC.

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May 17, 1995

DOC #12120871

SUMMARY

The Commission should liberalize the current television duopoly rule to permit UHF-UHF duopolies within the same market. The Commission should also permit common ownership of (i) a UHF television and a VHF station in the same market, or (ii) two VHF television stations in the same market on a case-by-case basis, where the applicant can demonstrate that such a UHF-VHF duopoly or such a VHF-VHF duopoly will not harm competition. In addition, but not as a substitute for, the foregoing, Malrite endorses the Commission's proposal to relax the present television duopoly rule by decreasing its prohibited contour overlap from Grade B to Grade A, so that television stations would be deemed to be operating in the same market, for purposes of the duopoly rule, only if their respective Grade A contours overlap with one another.

These liberalizations in the duopoly rule would recognize that the existing duopoly rule for television is outdated in light of today's diverse, changing and highly competitive multi-channel video marketplace. Today, UHF television licensees, as a whole, as well as certain discreet independent VHF television stations, continue to be disadvantaged, and liberalization of the television duopoly rule will assist such stations by affording them the opportunity to take advantage of economies of scale and

thereby achieve efficiencies of operation and reduced costs, leading to greater financial viability. More importantly, liberalization of the television duopoly rule will not adversely affect either competition or diversity in local television markets.

Moreover, the Commission should adopt guidelines that "grandfather" existing LMAs so as to permit their continuation, including all extensions and renewals, and should also permit transferability of contract rights under existing LMAs. Substantial public interest benefits can be achieved through the use of television LMAs.

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Federal Communications Commission
WASHINGTON, D.C. 20554

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Television Satellite Stations Review of Policy and Rules	))	MM Docket No. 87-8

TO: The Commission

COMMENTS OF MALRITE COMMUNICATIONS GROUP, INC.

MALRITE COMMUNICATIONS GROUP, INC. ("Malrite"), by its attorneys, pursuant to Sections 1.415 and 1.419 of the Commission's Rules, hereby submits its instant Comments in response to the Commission's Further Notice of Proposed Rule Making In This Proceeding, ___ FCC Rcd ___, FCC 94-322 (released January 17, 1995) ("NPRM").[1] In support whereof, it is shown as follows:

I. Interest of Malrite In This Proceeding

Malrite is the licensee of Television Stations WXIX-TV, Newport, Kentucky (operating in the Cincinnati, Ohio television market); and WFLX-TV, West Palm Beach, Florida. In addition,

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[1] By Order Granting Extension of Time For Filing Comments And Reply Comments, ___ FCC Rcd ___, DA 95-761 (Mass Media Bureau released April 7, 1995) the deadline for the filing of comments in this proceeding was extended to and including May 17, 1995. Consequently, Malrite's instant Comments are timely-filed.

Malrite is the controlling shareholder of Malrite of Ohio, Inc., licensee of Television Station WOIO(TV), Shaker Heights, Ohio (which operates in the Cleveland, Ohio television market). Moreover, Malrite of Ohio, Inc., has entered into a Local Marketing Agreement with the licensee of Television Station WUAB(TV), Channel 43, Lorain, Ohio, pursuant to which Malrite provides programming for broadcast on WUAB(TV). Moreover, Malrite is the controlling stockholder in Estrella Brillante, Inc., which is the controlling General Partner of Estrella Brillante Limited Co-Partnership, which is the licensee of Television Stations WLII-TV, Caguas, Puerto Rico; and WSUR-TV, Ponce, Puerto Rico. Based on its ownership or control of these five television stations, Malrite has a significant interest in the Commission's determinations in this rulemaking proceeding. The Commission's resolution of the issues in this proceeding will have profound consequences for the future of television broadcasting in this country. Malrite's experience with the matters here under consideration and its instant Comments will thus be of material assistance to the Commission in resolving this rulemaking proceeding.

II. Introduction

In its NPRM, the Commission solicited further comment on proposals to change its broadcast multiple ownership rules insofar as they pertain to television stations. The Commission's NPRM solicits comment on possible liberalization of its local ownership rule (the "duopoly" rule), as set forth in Section 73.3555(b) of the Commission's Rules, which prohibits common ownership of attributable interests in two television stations whose respective Grade B contours overlap. The Commission's NPRM also solicits comments on possible changes in the "one-to-a-market" ownership rule (Section 73.3555(c) of the Commission's Rules)[2], and on possible revisions to the National Multiple Ownership Rule, as set forth in Section 73.3555(e) of the Commission's Rules. Furthermore, in its NPRM, the Commission solicits public comment on what rules and policies, if any, to adopt with respect to television Local Marketing Agreements ("LMAs").

Malrite's instant Comments are confined to addressing those portions of the Commission's NPRM relating to the television duopoly rule and establishment of policies and rules governing television LMAs. As shown below, the current television duopoly rule adopted by the Commission in 1964, fails to take into account the dramatic changes that have taken place over the past three decades in the competitive landscape in which television broadcasters operate, particularly the emergence of today's multi-channel marketplace. Consequently, Malrite respectfully urges the Commission to modify the television duopoly rule to: (i) permit common ownership of attributable interests in two UHF

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[2] In its NPRM, the Commission refers to this rule as the Radio Television Cross-Ownership Rule.

television stations in the same market; permit common ownership of attributable interests in one UHF station and one VHF station in the same television market or in two VHF television stations in the same market on a case-by-case basis, if the applicant can demonstrate that such a UHF-VHF duopoly or such a VHF-VHF duopoly will not adversely affect competition. In addition, but not as a substitute for, the foregoing, Malrite endorses the Commission's proposal to relax the present television duopoly rule by decreasing its prohibited contour overlap from Grade B overlap to Grade A overlap, so that television stations would be deemed to be operating in the same market, for purposes of the duopoly rule, only if their respective Grade A field intensity contours overlap with one another. See NPRM, slip op. at 51, ¶116.

The Commission should not adopt any rules or policies that will inhibit the use of LMAs for television, since TV LMAs have led to efficiencies of operations and economies of scale that have, in turn, fostered the development of more and better public service programming, and, indeed, have allowed many television stations to survive where such stations would not be able to remain viable in the absence of LMAs. In the event that the Commission decides to adopt rules and policies governing television LMAs, Malrite respectfully urges the Commission to "grandfather" LMAs entered into among two television stations in the same market before the December 15, 1994 adoption date of the NPRM in this proceeding, both during the initial term of any such agreements and during any renewal or extension terms of those agreements, irrespective of whether the television duopoly rule is modified by the Commission in this proceeding. Moreover, regardless of any changes in the television duopoly rule adopted in this proceeding, the Commission should allow the contract rights associated with such existing "grandfathered" television LMAs to be transferrable when the brokering station is sold.[3] The continuation of existing LMAs under such "grandfathered" provisions will not adversely affect either competition or diversity in the local market; to the contrary, such LMAs will foster a diversity of viewpoints.

III. <u>**Analytical Framework**</u>

The Commission has a statutory mandate to regulate broadcast licensees in the pubic interest. <u>See</u> Section 303 of the Communications Act, 47 U.S.C. §303. In terms of the television multiple ownership limits, there are two principal components of the Commission's "public interest" mandate -- competition and diversity. <u>See</u> <u>NPRM</u> at ¶¶15-75. The Supreme Court has recognized that:

> "... the Commission has long acted on the theory that diversification of mass media ownership serves the public interest by promoting diversification of program

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[3] Furthermore, the Commission should permit interests by the brokering station in the brokered station, under such "grandfathered" LMAs, to be converted into a full ownership interest in the brokered station, irrespective of the revisions to the television duopoly rule which may be adopted by the Commission in this proceeding.

and service viewpoints, as well as by preventing undue concentration of economic power."

FCC V. National Citizens Committee For Broadcasting, 436 U.S. 775, 780 (1978).

A primary foundation of the Commission's multiple ownership limits has been the concept of diversity of ownership. It has been the cornerstone of past analyses of the multiple ownership rules that diversity of owners of broadcast facilities (i.e., "outlet diversity") leads to a diversity of viewpoints (i.e., "content diversity"). See e.g., Metro Broadcasting v. FCC, 497 U.S. 547 (1990) (recognizing evidence demonstrating a nexus between increased minority ownership and diversity of programming).

The public interest standard of the Communications Act includes examination of competitive issues; indeed, the Commission is empowered to "make findings related to the pertinent antitrust policies, draw conclusions from the findings, and weigh these conclusions along with other important public interest considerations." United States v. FCC, 652 F.2d 72, 81-82 (D.C. Cir. 1980) (en banc). Competition is a means to the end of maximizing consumer welfare and efficient allocation of resources.

The competition aspect of the public interest standard of the Communications Act primarily relates to protecting consumers and companies that are possibly subject to bottleneck monopolies due to the potential abuse of market power by a firm or group of firms. The purpose of such a competitive analysis is to determine whether in fact a firm or group of firms have and exercise such market power. See Revision of Radio Rules And Policies, 9 FCC Rcd 7183, 7184 (1994). Horizontal market share or concentration and barriers to entry are key factors in determining whether market power exists.[4] Regulatory barriers to entry in the television market are significant -- e.g., applicants must obtain a license, such licenses are scarce, and assignments or transfers of licensee must be approved by the Commission. Thus, market share and the degree of concentration may be more important in evaluating market power in the television market than in many other markets.

Market shares and concentration can only be assessed after relevant markets are determined. As a result, the first step in competitive analysis is to define the relevant product and geographic markets. The Supreme Court has stated that, in defining a product for antitrust market purposes, "no more definite rule can be declared than that commodities reasonably interchangeable by consumers for the same purposes constitute one product market. [Emphasis added.]"[5] Ownership of two or more

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4 United States v. Grinnell Corp., 384 U.S. 563, 571 (1966).

5 United States v. E.I. duPont de Nemours & Co., 351 U.S. 377, 394 (1956); see, also Brown Shoe Co. v. United States, 370 U.S. 294, 324-25 (1962). Cross elasticity tests are used to determine close substitutes and to measure the
(continued...)

broadcast stations in a given market is capable of increasing the likelihood of anti-competitive behavior if (a) the stations serve the same market; (b) the market is concentrated (i.e., has few competitors), and (c) allowing common ownership of several television stations in the same market subsequently increases concentration in the market. However, as shown below, the video marketplace of today is sufficiently diverse and competitive that the ownership of two television stations will not increase the likelihood of anticompetitive behavior if the two stations involved in question are both UHF facilities or if one is a UHF station and the other is a VHF station. Moreover, in certain circumstances, an applicant for authority to own attributable interests in two VHF stations serving the same market may be able to demonstrate that such a duopoly arrangement will not adversely affect competition, where such a showing is made, the VHF-VHF duopoly should be allowed.

Moreover, given the proliferation in recent years and the totality of information outlets available to consumers at the local level, any potential for reduction in local outlet

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[5](...continued)
responsiveness of buyers and sellers of one product to a change in the price of a similar product. See Landes & Posner, Market Power In Antitrust Cases, 94 Harv. L. Rev. 937, 945-48 (1981). See, also, Network Inquiry Special Staff, FCC, New Television Networks; Entry, Jurisdiction, Ownership and Regulation (1980), at 334 ("[t]he relevant product market includes all products reasonably substitutable for each other at prevailing prices.")

diversity as the result of adoption of Malrite's suggested revisions to the television duopoly rule will be unlikely to be translated into any realistic reduction of viewpoint diversity. Conversely, as shown below, allowing for UHF-UHF and UHF-VHF duopolies will promote efficiencies of operation that will promote diversity and continuation of broadcast operations by financially marginal stations, thereby serving the public interest.

IV. Adoption Of Malrite's Duopoly Rule Proposals Will Not Harm Competition Or Lessen Diversity But Will Serve The Public Interest

A. All Television Stations Face Robust Competition From A Multitude of Suppliers Of Video Programming, Including Significant Competition From Operators of Multichannel Video Delivery Systems

When the current television duopoly rule was adopted by the Commission in 1964, the relatively small number of media outlets that existed tended to limit competition and programming diversity. At that time, three national television networks provided video programming to a relatively small number of local television station affiliates for broadcast to the public. Over-the-air television was King, and the relatively small number of television licensees that existed, coupled with the television networks, had control over what information and entertainment the American viewers received. To prevent erosion of an already limited diversity of broadcast voices, the Commission promulgated duopoly rules prohibiting common ownership of multiple television stations within the same geographic area.

Today, a new media age has dawned. No longer do consumers obtain video informational and entertainment programming from just a handful of local television stations in a given market. In contrast with the market thirty years ago, today's local television stations face far greater competition from other local stations. Since just 1970, the number of television stations has doubled nationwide.[6]

In addition to this increase in competition among a larger number of local stations, new technologies are providing consumers with a plethora of alternative entertainment and information sources. New entries into the video programming market by cable and other video options have caused broadcasters to face intense competition from alternative video sources.

In 1991 the Commission's Office of Plans and Policy ("OPP") issued a wide-ranging report on broadcast television and the evolving market for video programming. F. Setzer and J. Levy, Broadcast Television In A Multichannel Marketplace, FCC Office of Plans and Policy Working Paper No. 26, 6 FCC Rcd 3996 (1991)

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6 The number of television broadcasters has increased 30% in the last decade, from 1,180 in 1984 to 1,520 in 1994. Compare Broadcast Station Totals as of September 1984, FCC News Release (Oct. 12, 1984) with Broadcast Station Totals as of September, 30 1994, FCC News Release (Oct. 12, 1994).

("<u>OPP Report</u>"). That report noted that the market for such programming had undergone tremendous changes over the previous 15 years. It found that changes in federal policy, primarily the enactment of the 1984 Cable Act, had generated new competition to so-called "traditional" broadcast services, resulting in increased choices for viewers. Furthermore, the <u>OPP Report</u> suggested that these increased choices meant increased competition for broadcast television and were, indeed, affecting its ability to contribute to a diverse and competitive video programming marketplace.

More specifically, the <u>OPP Report</u> found that:

> "In the next ten years, broadcasters will face intensified competition as alternative media, not only by advertising but also by subscription revenues, and offering multiple channels of programming, expand their reach and their audience. <u>Television broadcasting will be a smaller and far less profitable business in the year 2000 than it is now</u>. Although broadcasting will remain an important component of the video mix, <u>small-market stations, weak independents in larger markets, and UHF independents in general will find it difficult to compete, and some are likely to go dark</u>. [Emphasis added.]"
>
> <u>OPP Report</u>, <u>supra</u>, 6 FCC Rcd at 3999.

Furthermore, the <u>OPP Report</u> concluded that, as a result of the effects of increased competition on broadcast television,

> "[b]roadcast television stations, as a group, will suffer declining revenue. In large markets, ... some [television broadcasters] may scale back local programming -- mostly news and public affairs -- and some marginal stations may go dark. In smaller markets the effects will be more severe with some stations going off the air, reducing viewer choice."

Id. at 4001.

See, also, Id. at 4097. In similar fashion, the OPP Report concludes that broadcast television stations will experience increasing program costs at the same time as they experience declining revenues, and that the potential for greatly increased competition from cable in local advertising in the future is clear, as well. Id. at 4097.

Based on these bleak predictions for the prospects of television broadcasting, the OPP Report makes the following recommendations:

> "Broadcasters should not be hindered excessively from diversifying to make efficient use of their core skills -- production, acquisition, and scheduling of programming, as well as selling advertising. The physical distribution of the broadcast signal is, in fact, a small part of the broadcasters' business. Thus, the Commission should eliminate its broadcast multiple ownership and network-cable ownership rules, relax its duopoly rules, and seek congressional authority to relax its cable broadcast crossownership prohibition. ... fewer broadcast stations also means that there will be fewer areas in which broadcast service provides a competitive check on cable rates."

OPP Report, 6 FCC Rcd at 4002.

See, also ID. at 4103.

In this regard, the OPP Report correctly notes that:

> "Many of the FCC's broadcasting rules were adopted when there were far fewer channels per market and the three networks dominated the supply of programming. Much of the FCC's broadcast regulation was motivated by a desire to limit economic market power and concentration of control over program content on the part of broadcast stations and networks. These concerns appear misplaced, or at best, of greatly diminished importance, in a world where broadcast stations and

networks face dozens of cable channels and program networks."

OPP Report, 6 FCC Rcd at 4004.

These conclusions are fully supported by the facts relating to today's multichannel video marketplace. In addition to an increase of almost 30 percent in the number of television broadcast stations in the United States since the last time that the television multiple ownership rules were modified, cable television system operators have also grown in importance over the last two decades as a group of suppliers of delivered video programming. At present, cable television systems pass nearly 96 percent of all U.S. households, and approximately 66 percent of U.S. television households (i.e., approximately 59 million households) subscribe to cable television services. Implementation of Section 19 of the Cable Television Consumer Protection And Competition Act of 1992 -- Annual Assessment of the Status of Competition in The Market For The Delivery of Video Programming, CS Docket No. 94-48, 9 FCC Rcd 7442 ("Cable Competition Report") (1994), at ¶¶18 and 100.[7] Since 1984, when the broadcast television multiple ownership rules were last revised, the subscriber penetration of the cable television industry has increased from 43.7 percent to 66 percent. Id. The number of cable video networks and the channel capacity of cable

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[7] See also Exhibit 1, infra, which demonstrates that cable penetration both nationally and in the Cleveland market is at the rate of 66 percent.

systems continue to grow dramatically. Id. at Appendix C, Tables 2-4.

In addition to cable, there are now a variety of emerging subscription-based multichannel providers of video programming which compete with broadcasters in the same manner as does cable television. As described in detail in the Commission's September 28, 1994 Cable Competition Report, supra, many consumers can now subscribe to a "wireless" cable service, comprised of Multichannel Multipoint Distribution Service ("MMDS") and Instructional Television Fixed Service ("ITFS") channels, purchase a home satellite earth station receiving dish, and subscribe to Direct Broadcast Satellite ("DBS") services. In 1994, 143 wireless cable systems served 550,000 subscribers. Cable Competition Report, 9 FCC Rcd at 7482.

Moreover, Satellite Master Antenna Television ("SMATV") systems presently serve approximately one million subscribers, and approximately four million television households own a home satellite receiving dish. Id. at ¶7488-89 and 7480. In 1994, DBS providers began operating, and the two such existing operators (DirectTV and United States Satellite Broadcasting ("USSB")) predict that unit sales of DBS receiving equipment will reach one million by the Summer of 1995. Id. at 7475-76. Furthermore, USSB estimates that, in seven years, approximately

40 percent of all television households may receive programming via DBS. Id. at 7478.

Furthermore, in the near future, consumers will be able to receive video entertainment and informational programming directly through their telephone lines: as of September 1994, 24 applications had been filed with the Commission by local telephone exchange carriers ("LECs") seeking Video Dialtone ("VDT") authorizations which would cover a total of 8.5 million households. Id. at 7496.[8]

In addition, television broadcasters face competition from Low Power Television ("LPTV"), video cassettes, and video discs in the distribution of entertainment and informational programming. Also, multimedia informational and entertainment programming is a available to consumers through on-line computer networks (e.g., Prodigy, America On Line, Compuserve, GENIE, Internet, etc.) CD ROM disc systems, and other interactive

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8 Since 1990, the Commission has adopted orders easing the regulatory restrictions and creating a VDT framework for LEC participation in the multichannel video distribution marketplace, consistent with the present prohibition in Section 613(b) of the Communications Act against a common carrier providing video programming directly to subscribers in its telephone service area. That VDT framework, along with technological advances, has spurred increased video-related activity by LECs, including several market and technical trials. In short, telephone LECs will soon be providing significant competition, not only to broadcasters, but also to traditional cable television systems, in the multichannel distribution of video programming.

multimedia technologies, all which compete for audience with broadcast television licensees. And, of course, radio broadcast stations and print media continue to vigorously compete with local television broadcasters for the attention of the media consumer and for advertising dollars.

So immense and diverse is today's video programming marketplace that some program distributors (including television licensees, television networks, cable networks, et al.) have begun the continuous broadcast of the channel designation or programming service logo at the bottom corner of the television screen in hopes that viewers will come to know whom they are watching as they "surf" the multichannel seas.

As a result of all of these various market changes, television broadcasters have "suffered an irreversible long-term decline in audience and revenue share" and will not be able to remain viable in today's multi-channel video marketplace unless "the Commission ... foster[s] development of a marketplace in which all firms [including local television broadcasters] can compete on an even basis, unhindered by artificial regulatory handicaps." OPP Report, supra, 6 FCC Rcd at 3999-4004.

Unless greater flexibility is shown by the Commission by liberalization of its television duopoly rule in the manner proposed herein by Malrite, television broadcasters will continue to lose ground in their ability to adequately compete in today's multi-channel video marketplace. Such audience and revenue fractionalization will likely lead to curtailment in the quality and quantity of core local programming , and may ultimately result in certain stations being forced to go dark. Clearly, the public interest requires that the Commission avoid such a result, particularly since broadcast services provide local programming and public service programming on a "free" basis, in a manner not paralleled by other video delivery systems.

B. UHF Television Stations Continue To Be Competitively Disadvantaged Vis-A-Vis VHF Television Stations

Quite apart from these competitive pressures faced by all television broadcasters today, one specific subset of television licensees -- those that operate UHF television stations -- face yet an additional hurdle in their efforts to survive in the highly competitive multichannel video marketplace of today.

UHF television stations have historically been at a competitive disadvantage vis-a-vis their VHF television rivals; this disadvantage has often been referred to as the so-called "UHF handicap". Specifically, UHF television stations have generally reached a lower number of homes, and, accordingly, obtain a smaller share of audience. This is the result of the relative inefficiency of propagation of radiofrequency energy at UHF frequencies, as compared with such propagation at VHF frequencies. This has resulted, in turn, in a weaker broadcast signal for UHF stations, as compared with VHF stations[9], and has resulted, in turn, in UHF television signals being perceived by viewers as being of lower quality than VHF television signals. This disparity in over-the-air reception quality has typically led to lower UHF station revenues and profitability, in relation to VHF television station competitors. With the growth of cable television distribution, this over-the-air disadvantage has decreased somewhat.

However, the UHF competitive disadvantage has not been eliminated. For one thing, since 66 percent of the DMA television households subscribe at least to basic cable television service, the remaining 34 percent of the available audience must depend on over-the-air reception to view local television signals in a given market. This means that, on average, 34 percent of the available audience is still subject to the over-the-air UHF broadcast disadvantage. See Exhibit 1, infra.

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9 UHF television stations utilize a shorter wavelength than do their VHF counterparts, and, therefore, may be affected adversely (e.g., as the result of ghosting and loss-of-signal problems) by terrain, weather, buildings and even foliage. The higher levels of effective radiated power authorized by the Commission for UHF TV stations, as compared with VHF stations, has not eliminated these technical disadvantages.

These facts are confirmed by Malrite's own experiences. In this regard, Malrite's television station in the Cleveland, Ohio market -- WOIO(TV), Shaker Heights, Ohio -- operates on UHF Channel 19. As described below, Malrite has entered into an LMA under which it is providing programming for broadcast on Television Station WUAB(TV), which operates on UHF Channel 43 in Lorain, Ohio. Nielsen data for the Cleveland DMA demonstrates that the total Cleveland DMA circulation (i.e., the percentage of Cleveland DMA homes reached weekly by a given television station) was consistently higher for each of the Cleveland VHF television stations than for either WOIO(TV) or WUAB-TV, both from sign-on to sign-off, and during prime time hours.[10] Moreover, for television stations with network affiliations, household shares for UHF stations are routinely much lower than those for VHF stations.[11] Similarly, the household share advantage enjoyed by VHF television stations extends to an advantage by VHF independent stations in comparison to UHF independent stations with which they compete.[12] In all 19 markets where an independent UHF station competes an independent VHF station, the UHF station is the <u>lower</u> rated.[13] Indeed, because of the technical superiority of VHF signals to UHF signals, there is a

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10 <u>See</u> Exhibit 2, <u>infra</u>.

11 <u>See</u> Exhibit 3, <u>infra</u>.

12 <u>See</u> Exhibit 4, <u>infra</u>.

13 <u>See</u> Exhibit 4, <u>infra</u>.